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OFFICE OF PETITIONS

In re Application of	:
Abrahmsen et al.	:
Application No. 08/765,695	: NOTICE REGARDING
International Filing Date:	: IMPROPER REQUEST
June 7, 1995	: FOR CONTINUED
371 Date: July 25, 1997	: EXAMINATION
Title of Invention:	: AND
CONJUGATE BETWEEN A MODIFIED	: NOTICE OF ABANDONMENT
SUPERANTIGEN AND A TARGET-SEEKING	:
COMPOUND AND THE USE OF THE	:
CONJUGATE	:

Background:

Applicants filed a Request for Continued Examination (RCE) under 37 CFR 1.114 on March 9, 2004 in the above-identified application, which is the National Stage of an international application filed on June 7, 1995. The RCE was improper because the provisions of 37 CFR 1.114 do not apply to an international application filed under 35 U.S.C. 363 before June 8, 1995. See 37 CFR 1.114(e)(3).

A request for continued examination is not a type of new application filing. See Request for Continued Examination Practice and Changes to Provisional Application Practice, Final Rule, 65 Fed. Reg. 50092, 50097 (August 16, 2000). The Office cannot convert an improper RCE to an application, such as a continuing application under 37 CFR 1.53(b) or (d). An improper RCE will not operate to toll the running of any time period set in the previous Office action for reply to avoid abandonment of the application. See Manual for Patent Examining Procedure (MPEP) 706.07(h), page 700-70, subsection III.A., "Treatment of Improper RCE", (8th Ed. 2001).

In the instant case, a final Office action was mailed on September 8, 2003. Under 35 U.S.C. § 133, an applicant has six (6) months to reply to an Office action. Upon failure to prosecute the application within six months of notice of the

Office action, the application shall be regarded as abandoned. This statutory requirement may not be waived by the Office. The filing of the improper RCE on March 9, 2004 did not toll the time period set forth in the Office action mailed on September 8, 2003. Thus, the application became **abandoned on March 9, 2004** for the failure to reply to the Office action mailed on September 8, 2003.

The Office mistakenly treated the improper RCE as a proper RCE and allowed examination of the application to continue. A non-final Office action was mailed May 26, 2004. An Amendment was filed September 2, 2004. An Ex Parte Quayle Action was mailed November 17, 2004. A Response After Ex Parte Quayle Action, drawings, and an Amendment were filed January 27, 2005. A Notice of Allowance and a Notice of Allowability were mailed on April 29, 2005, and the Issue fee was received on July 29, 2005. The Office regrets the delay in notifying Applicants of this error.

The application has been withdrawn from issue to process as an abandoned application.

Applicants may file a petition under 37 CFR 1.137(b) to revive the application within **two (2) months from the date of this Notice.** **This time period may not be extended.** Applicants may request a refund of the RCE fees.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.



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